

## Message Text

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42

ORIGIN COME-00

INFO OCT-01 EA-11 ISO-00 SP-03 AID-20 EB-11 NSC-07 RSC-01

CIEP-03 TRSE-00 SS-20 STR-08 OMB-01 CEA-02 AGR-20 L-03

H-03 PA-04 PRS-01 USIA-15 CIAE-00 INR-11 NSAE-00 /145 R

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DRAFTED BY COM/IEPR/DND: MJSEIBER

APPROVED BY EB/CBA/OCA/REP: GPWILSON

EA/PHL: RTWILLNER (DRAFT)

STR: TGRAHAM (DRAFT)

EB/OFT: RSIMPSON (SUBS)

COM/OTP/DND: JRJOHNSTON

TREASURY: MFIELD (DRAFT)

AGRICULTURE: DDLOUHY (DRAFT) - EVERVILLE (SUBS)

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R 161504Z AUG 74

FM SECSTATE WASHDC

TO AMEMBASSY MANILA

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E.O. 11652: N/A

TAGS: EGEN, EFIN, ETRD, RP

SUBJECT: PHILIPPINE CLAIM FOR COCONUT OIL PROCESSING TAX  
REFUND

REF: MANILA 8303

1. USG POSITION DENYING GROUNDS FOR PHILIPPINE CLAIM CONTINUES UNCHANGED AS SET FORTH BELOW. SUGGEST, HOWEVER, EMBASSY NOT INFORM GOP OF POSITION BEFORE ECONOMIC TALKS RESUME.

2. ARGUMENTS PRESENTED TO GOP IN 1969 REJECTED GOP REQUEST AS QTE WITHOUT LEGAL BASIS UNQTE. THESE ARGUMENTS WERE SPELLED OUT IN STATE TELEGRAM 052489, APRIL 7, 1969, AND WERE LIMITED OFFICIAL USE

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PRESENTED TO GOP BY EMBASSY IN NOTE TO DEPARTMENT OF FOREIGN

AFFAIRS APRIL 28, 1969. FILES HERE SHOW NO RECORD OF ANY PHILIPPINE RESPONSE. LANGUAGE OF NOTE, TRANSMITTAL OF WHICH WAS CONFIRMED IN MANILA 4292, APRIL 28, 1969, WAS AS FOLLOWS:

(STANDARD OPENING) QUOTE AND HAS THE HONOR TO REFER TO THE DEPARTMENT OF FOREIGN AFFAIRS NOTE WHICH REQUESTED RECONSIDERATION OF THE UNITED STATES GOVERNMENT'S DECISION TO DENY THE CLAIM OF THE REPUBLIC OF THE PHILIPPINES WITH RESPECT TO THE THREE-CENT PER POUND TAX PAID BY PROCESSORS ON THE FIRST DOMESTIC PROCESSING OF PHILIPPINE COCONUT OIL FROM JULY 4, 1946 TO OCTOBER 1, 1957.

THE UNITED STATES GOVERNMENT CANNOT ACCEPT THE PHILIPPINE GOVERNMENT'S VIEW THAT COLLECTION OF THIS PROCESSING TAX VIOLATED ARTICLES II AND IV OF THE PHILIPPINE-AMERICAN TRADE AGREEMENT OF 1946, AND OF THE REVISED AGREEMENT OF 1955 (LAUREL-LANGLEY AGREEMENT). ARTICLE II OF BOTH THESE AGREEMENTS EXEMPT SPECIFIED AMOUNTS OF COCONUT OIL FROM THE PAYMENT OF ORDINARY CUSTOMS DUTIES. ARTICLE IV OF BOTH OF THESE AGREEMENTS CLEARLY CHARACTERIZES A PROCESSING TAX AS AN INTERNAL TAX. BOTH GOVERNMENTS HAVING AGREED TO THIS CHARACTERIZATION, THE GOVERNMENT OF THE UNITED STATES CANNOT ACCEPT THE GOVERNMENT OF THE PHILIPPINES' REFERENCE TO THE "SPIRIT" OF THE AGREEMENTS TO ARGUE THAT THIS TAX IS IN EFFECT A CUSTOMS DUTY FROM WHICH IT SHOULD HAVE BEEN GRANTED AN EXEMPTION.

FURTHER, COLLECTION OF THE TAX DID NOT VIOLATE ARTICLE IV, PARAGRAPH 2 OF BOTH THESE AGREEMENTS, WHICH LIMIT THE PAYMENT OF AN INTERNAL TAX ON PHILIPPINE ARTICLES TO THE AMOUNT PAYABLE ON LIKE ARTICLES WHICH ARE THE PRODUCT OF THE UNITED STATES OR OTHER FOREIGN COUNTRIES. UNDER SECTION 4511 OF THE UNITED STATES INTERNAL REVENUE CODE, THE THREE-CENT PROCESSING TAX WAS LEVIED ON THE PROCESSING OF ALL COCONUT OIL, REGARDLESS OF ITS ORIGIN. THEREFORE THE SUGGESTION IN THE MEMORANDUM ACCOMPANYING THE NOTE OF THE GOVERNMENT OF THE PHILIPPINES THAT COCONUT OIL PRODUCED IN THE UNITED STATES WOULD HAVE BEEN EXEMPT FROM THIS TAX IS INCORRECT. IN THE APPLICATION OF THIS TAX, THERE HAS BEEN NO DISCRIMINATION AGAINST PHILIPPINE COCONUT OIL.

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THE UNITED STATES GOVERNMENT HAS CAREFULLY CONSIDERED THE POSITIONS PRESENTED IN LAW AND EQUITY BY YOUR GOVERNMENT BUT, IN VIEW OF THE ABOVE, IT AGAIN FINDS ITSELF UNABLE TO ACCEPT YOUR GOVERNMENT'S CONTENTIONS AND THEREFORE CANNOT REVERSE ITS ORIGINAL DECISION ON THIS CLAIM. END QUOTE (STANDARD CLOSING).

3. COPY OF STATE 052489 BEING POUCHED AS ENCLOSURE TO AIR-  
GRAM TRANSMITTING BACKGROUND REVIEW OF THIS ISSUE WHICH WAS  
PREPARED IN DEPARTMENT OF COMMERCE FOLLOWING RECEIPT OF  
MANILA 8303. KISSINGER

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** OILS, ECONOMIC AGREEMENTS, NEGOTIATIONS, COCONUT, EXCISE TAXES  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 16 AUG 1974  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** CollinP0  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1974STATE179869  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** MJSEIBER  
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**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** ND  
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**Review Date:** 09 AUG 2002  
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**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** PHILIPPINE CLAIM FOR COCONUT OIL PROCESSING TAX  
**TAGS:** EGEN, EFIN, ETRD, RP, US  
**To:** MANILA  
**Type:** TE  
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